IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 862 OF 2007

Vitthal Baburao Kate ....Petitioner
V/s
Laxman Dinkarao Jachak ....Respondent.

Mr.Pankaj Deokar h/f Mr.R.S.Kate, Adv. For the petitioner.

Mr.Abhijit P. Kulkarni, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
3/10/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of parties.

The present petition is filed by original defendant taking exception to an order passed by the trial Court dated 7.3.06 declining to record evidence of the defendant by appointing a Commissioner. It is the case of the defendant that he is about 76 years old and not keeping good health. Thus a request was made to appoint a Commissioner for recording his evidence. The said application came to be rejected by the trial Court by observing that the said witness was present before the Court and part of cross examination was recorded in the Court. By so observing the request has been turned down. Learned counsel for the petitioner submits that as yet defendant is not fit to attend the Court and to depose. Learned counsel for the respondent submits that if and in case the Commissioner is appointed for recording part of cross examination then that should be done without any loss of time and as expeditiously as possible. Learned counsel for the petitioner assures this Court that without any loss of time the remaining cross examination

could be recorded by appointing a Commissioner. Having regard to the totality of facts and ends of justice I deem it appropriate to allow the application moved by the defendant for recording remaining cross examination by appointing a Commissioner at the residence of defendant. In the result writ petition is allowed. Impugned order passed by the trial Court dated 7.3.06 is quashed and set aside. I direct the trial Court to appoint a Commissioner for recording remaining cross examination of the defendant at the place convenient to the defendant at his costs. The trial Court shall proceed to appoint the Commissioner within two weeks from today. The Commissioner shall in turn record the remaining cross examination of the defendant within a further period of one week there from. It shall be open for the parties to move for taking case on board so that the matter can move with due dispatch. As the suit is of the year 1994 I hope and trust that the trial Court shall make endeavour to decide the same as expeditiously as possible and preferably within a period of three months from today. Rule made absolute in above terms.

3.10.07